Supreme Court, U. S.
FILED
DEC 27 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-882

BILL P. COGDELL,

Petitioner,

v.

THE FORT WORTH NATIONAL BANK, Trustee,
Under the Will of D. M. COGDELL, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS

GLORIA TANNER SVANAS
1813 East Eighth Street
Odessa, Texas 79761
Counsel for Petitioner

December, 1976

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In The

Supreme Court of the United States

OCTOBER TERM, 1976

No. ——

BILL P. COGDELL,

Petitioner,

v.

THE FORT WORTH NATIONAL BANK, Trustee,
Under the Will of D. M. COGDELL, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To The Court of Civil Appeals
For the Eleventh Supreme Judicial District of Texas

OPINIONS BELOW

The Opinion of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas is reported at 536 SW2d 257. The Motion for Rehearing was denied on May 6, 1976. On

September 29, 1976, the Supreme Court of Texas dismissed Petitioner's Application for Writ of Error for Want of Jurisdiction, and Petitioner's Motion for Rehearing was overruled on October 27, 1976. There is no written Opinion by the Supreme Court of Texas.

JURISDICTION

The jurisdiction of this Court is invoked under *28 U.S.C. §1257(3).*

QUESTION PRESENTED

Whether a National Bank's sale of real property of a Trust to the Co-Executors prohibited by Texas Statutes constitutes a waiver of the venue privilege of *12 U.S.C. §94*?

STATUTES INVOLVED

12 U.S.C. § 94

12 U.S.C. §94. Venue of suits

Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.
Title 12 U.S.C.A. Banks & Banking §§ 1 to 530, Page 442.

TEXAS PROBATE CODE

§352. Representative Not to Purchase Property of the Estate

The personal representative of an estate shall not become

the purchaser, directly or indirectly, of any property of the estate sold by him, or by any corepresentative if one be acting. If any such purchase is made, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.
Vol. 17B V.A.T.S. Probate Code, Page 214

STATEMENT OF THE CASE

Petitioner, Bill P. Cogdell (whose name has been legally changed from Marion P. Cogdell) filed suit in the 132nd Judicial District Court of Scurry County, Texas, (Tr. 1-8) for Declaratory Judgment to have declared void ab initio all leases, sales of all properties, real and personal, of the Estate of D. M. Cogdell, Deceased, to the Independent Co-Executors of the Estate of D. M. Cogdell, Deceased, prohibited by *§352* of the *Texas Probate Code*. The Fort Worth National Bank, Trustee, Co-Defendant, filed its Plea of Privilege claiming *12 U.S.C. §94* (Tr. 9) which was controverted by Petitioner (Tr. 13-16) claiming ten statutory exceptions established venue in Scurry County, Texas. Summary Judgment sustaining the Bank's Plea of Privilege was rendered on October 20, 1975. (Tr. 34-35)

In November, 1974, The Fort Worth National Bank, Trustee under the Last Will and Testament of D. M. Cogdell, Deceased, executed special Warranty Deeds (Tr. 6) conveying undivided interests in real property in Scurry County, Texas, from the trust

for the benefit of Marion P. Cogdell to the Independent Co-Executors of the Estate of D. M. Cogdell, Co-Defendants in the District Court.

The Eleventh Court of Civil Appeals erroneously held that since the Bank had already parted with title to the land that it was not a suit for recovery of land although the Deeds were void as a matter of law under §*352* of the *Texas Probate Code*. The Court of Civil Appeals affirmed the Summary Judgment sustaining the Plea of Privilege of The Fort Worth National Bank, Trustee. (Tr 46-47) 1-A After Motion for Rehearing was denied on May 6, 1976, Petitioner timely filed his Application for Writ of Error in the Supreme Court of Texas posing the question whether a National Bank can violate substantive laws of Texas and claim the protection of a Federal law granting preferential venue to National Banks. The Application for Writ of Error was dismissed for Want of Jurisdiction on September 29, 1976, and the Motion for Rehearing of the Application for Writ of Error was overruled on October 27, 1976. Petitioner has taken every requisite step under the *Texas Rules of Civil Procedure* to preserve the error of the Bank's Waiver of its venue privilege by the Bank's execution and delivery of the void Deeds.

REASONS FOR GRANTING THE WRIT

This case presents a clear example of Waiver by a National Bank in a local action. The Fort Worth National Bank, Trustee, by accepting appointment as Testamentary Trustee (Tr. 40-41) and dealing in its fiduciary capacity with assets of the Trust in the Estate of D. M. Cogdell, Deceased, in violation of §*352* of the *Texas Probate Code* waived venue privilege of *12 U.S.C. §94*, in an action filed in the County in which it conveyed undivided interests in real estate held as assets of a Trust to the Co-

Executors of the same Estate creating the Trust. (*Michigan National Bank v. Robertson, 372* US 591, 594 (1963). It is fundamental that a National Bank cannot violate the Statutes of Texas with impunity from venue outside the County of its principal place of business. The action against the Bank to declare its Deeds void as a matter of law constituted an action to recover real property which is a local action within the exception to *12 U.S.C. §94* carved out by *Casey v. Adams,* [102 US 66 (1880)].

It is uncontroverted that the Trustee-Bank as Grantor participated in the sales specified in the Petition for Declaratory Judgment. (Tr. 6) The Deed conveyed undivided interests of the Trusts in land in Scurry County, Texas, where jurisdiction is sought to be maintained against the Bank.

> "It is well established that the venue provisions of 12 U.C.S. 94 were enacted for the "convenience" of the banks and may be waived by the bank's conduct in a county where jurisdiction is sought to be maintained, whether such conduct occurred before or after the filing of the suit. *Reaves v. Bank of America,* 352 F.Supp. 745 (S.D. Cal. 1973).

Following the sales by the Trustee-Bank in November, 1974, the Trustee-Bank continued to use the Scurry County Court in Probate No. 2422: *In re: Estate of D. M. Cogdell, Deceased,* and continued to use the District Court of Scurry County, Texas, to enforce its claims as Testamentary Trustee under the Estate of D. Cogdell, Deceased, in Cause No. 9730 styled The Fort Worth National Bank, Trustee under the Will of D. M. Cogdell, Deceased, for the benefit of Marion P. Cogdell and for the benefit of Charlotte Cogdell Etgen, Plaintiffs, v. Jonisue Cogdell Stiff, David Martin Cogdell, Jr., and William Munsey Cogdell, Individually and as Independent Executors of the Estate of D. M. Cogdell, Marion P. Cogdell and Charlotte Cogdell Etgen,

Defendants. Indubitably, the Trustee-Bank knew the Grantees in the Warranty Deed were one and the same individuals as the Independent Co-Executors under the Last Will and Testament of D. M. Cogdell, Deceased, which also created the Testamentary Trust under which the Trustee-Bank claimed. In fact, the Trustee-Bank executed the special Warranty Deed to the individuals as Independent Co-Executors as part of the settlement in Cause No. 9730 in which David Martin Cogdell, Jr., and William Munsey Cogdell as Independent Co-Executors of the Estate of D. M. Cogdell, Deceased, had filed a Cross-Action against The Fort Worth National Bank, Individually and The Fort Worth National Bank, Trustee. The Trustee-Bank ratified the transaction by accepting the proceeds for the sales and crediting the proceeds to the Trusts. National Bank of North America v. Associates of Obstetrics and Female Surgery, Inc., _____ US _____, 48 L Ed 2nd 92, 92 S.Ct. _____(1976).

It is obvious that the enforcement against the Trustee-Bank of the proscription of §*352* of the *Texas Probate Code* will not interfere with the purpose of the National Bank, Respondent herein, nor will it tend to impair or destroy its efficiency as a Federal agency nor will it conflict with the paramount law of the United States. First National Bank in St. Louis v. State of Missouri, 263 US 640, 656 (1923); National Bank v. Commonwealth, 9 Wall. 353, 362[19 L Ed 701]; Davis v. Elmira Savings Bank, 161 US 275, 283; McClellan v. Chipman, 164 US 347, 357; Waite v. Dowley, 94 US 527, 533.

> "When a bank . . . commits tortious acts, by and through its agent, such as is alleged in this case, we hold that it has waived its privilege to the extent of being sued on the local transaction or activity involving the alleged tortious acts." Vann v. First National Bank in Little Rock, 324 So 2d 94, 95 D.Ct. Fla. App. (1976).

As a matter of law, a Judgment that the sales by The Fort Worth National Bank, Trustee, are void restores the title to the Trustee-Bank subject to the terms of the Testamentary Trust under the Last Will and Testament of D. M. Cogdell, Deceased, for the benefit of Marion P. Cogdell (Petitioner herein), and for the benefit of Charlotte Cogdell Etgen. Nevertheless, this is not a suit for construction of a Trust, and the Court of Civil Appeals' citations are inapposite. The conveyances by the Trustee-Bank consisted of undivided interests in real property in the Cogdell Center in Scurry County, Texas, held by the Trustee-Bank as Trust assets for the benefit of Petitioner under the Last Will and Testament of D. M. Cogdell, Deceased. It is the sales of these undivided interests in real properties that Petitioner seeks to cancel, rescind and have declared void ab initio. *Texas Probate Code §352.* The real property sold to Billy Cogdell and D. M. Cogdell, Jr., Grantees, was property located in Scurry County, Texas, and sold by the Trustee-Bank as Co-Representative to the Independent Co-Executors. William Munsey Cogdell (also known as Billy Cogdell) and David Martin Cogdell, Jr. (also known as D. M. Cogdell, Jr.) Co-Defendants in the District Court, who are the purchasers directly of the property of the Estate of D. M. Cogdell, Deceased, sold by the Trustee-Bank prohibited by §*352* of the *Texas Probate Code*. The proscription of the statute is clear and unambiguous and does not provide for any exceptions from its terms. 7-Up Bottling Co. of Austin, Inc. v. The Capital National Bank, 505 SW2d 624 (Austin Civil Appeals 1974, writ refused, no reversible error). The dual relationship of the purchasers and the dual relationship of the Seller in its fiduciary capacity under the Estate of D. M. Cogdell, Deceased, are controlling. The sole question is whether The Fort Worth

National Bank, Trustee, could sell real property acquired out of the Estate of D. M. Cogdell, Deceased, to the Co-Executors of the Estate of D. M. Cogdell, Deceased, in their capacity as individuals against the prohibition of *Texas Probate Code §352.*

The rule is that if the suit is founded upon any equitable title or right and requiring for its effectuation the removal of a legal impediment to Plaintiff's land, it is governed by *Article 1995(14) Vernon's Annotated Texas Statutes* as an exception to the venue statute and must be brought in the County where the land is situated. Landeau v. Investment Company, 358 SW2d 553 (Texas Supreme Court 1962); Renwar Oil Corporation v. Lancaster, 276 SW2d 774 (Texas Supreme Court 1955). On the basis of these authorities, it is perfectly clear that a suit by a *cestui que* trust to set aside and cancel deeds conveying his interest in the title to land in violation of *Probate Code §352* is properly regarded as a suit to remove an encumbrance or cloud upon the title to land and is within the mandatory exception to the venue statute and must be brought in the County where the land is situated, that is, Scurry County, Texas.

It is well settled that *12 U.S.C. §94* is not applicable to local *in rem* actions.

> "Local actions are in the nature of suits *in rem,* and are to be prosecuted where the same on which they are founded is situated." Casey v. Adams, 102 US 66, 68 (1880).

The discriminatory application of *12 U.S.C. §94* by the Eleventh Judicial District Court of Civil Appeals granting preferential venue to The Fort Worth National Bank, Trustee, is a denial of equal protection to Petitioner guaranteed by the Fourteenth Amendment to the United States Constitution and the equal protection principle embodied in the due process clause

of the Fifth Amendment to the United States Constitution. The decision by the Eastland Court of Civil Appeals holding that the Trustee-Bank had parted with title deprived Petitioner of his recourse statutorily specified by *Texas Probate Code §352.*

> ". . . any person interested in the Estate may file a written complaint with the Court in which the proceedings are pending, . . .".

Every citizen of Texas is subject to the exceptions *(Article 1995 Vernon's Annotated Texas Statutes)* to the statutory right to be sued in the County of his domicile—except National Banks in some Courts in Texas. It cannot be said that in all tribunals of Texas equal laws prevail. Cincinnati St. R. Co. v. Snell, 193 US 30, 37 (1904). The preferential venue privileges accorded National Banks by some Texas Courts undeniably over-burden the already congested dockets of metropolitan Courts. Furthermore, the National Bank as a co-conspirator and indispensable party co-defendant can effectively deprive the Court in which it is sued of jurisdiction over its joint tort-feasors or conspirators by claiming its preferential venue privilege as a National Bank. Casey v. Adams, 102 US 66 (1880). *12 U.SC. §94* as applied in Texas is grossly discriminatory in granting preferential venue to National Banks against the substantive real property rights of other citizens of Texas [Williams v. Illinois, 399 US 235 (1970); Griffin v. Illinois, 351 US 12, 17 n. 11 (1956)] and exceeds limits of constitutional due process clause of the Fifth Amendment offending traditional notions of fair play and substantial justice. ". . . this court has not . . . embraced the general proposition that a wrong may done if it can be undone." Stanley v. Illinois, 405 US 645, 647 (1972).

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should issue and that this Court should vacate the Orders of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas and remand the case to the District Court of Scurry County, Texas, for trial on the merits.

Respectfully submitted,

Gloria Tanner Svanas

GLORIA TANNER SVANAS
1813 East Eighth Street
Odessa, Texas 79761
Telephone: (915) 337-1568

Counsel For Petitioner

CERTIFICATE OF SERVICE

I, GLORIA TANNER SVANAS, a member of the Bar of the Supreme Court of the United States and the Attorney for BILL P. COGDELL, Appellant herein, hereby certify that on the 21 day of December 1976, I have mailed two (2) copies of the foregoing Petition for Writ of Certiorari to the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas to opposing Counsel at the following address:

Mr. Robert M. Randolph
Law, Snakard, Brown and Gambill
2600 Fort Worth National Bank Building
Fort Worth, Texas, 76102; and

Mr. Marvin Champlin
Law, Snakard, Brown and Gambill
2600 Fort Worth National Bank Building
Fort Worth, Texas, 76102

Attorneys for The Fort Worth National Bank, Trustee.

I certify that all parties required to be served, have been served.

Gloria T. Svanas

Gloria T. Svanas

A-1

Bill P. Cogdell

Appellant

v.

The Fort Worth National Bank

Appellee

No. 4868—Appeal from Scurry County

Bill P. Cogdell filed suit against the Fort Worth National Bank, Trustee, and others for a declaratory judgment. The Bank's motion for summary judgment sustaining its plea of privilege was granted and Cogdell has appealed. We affirm.

The Bank's plea was controverted by citing ten exceptions under Article 1995, Texas Revised Civil Statutes.

The federal statute (12 USCA §94) on venue against national banking association is as follows:

§94. Venue of suits

> Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases . . ."

In Mercantile National Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520 L.Ed.2d 523 (1963), the court said:

> "The phrase 'suits . . . may be had' was, in every respect, appropriate language for the purpose of specifying the precise courts in which Congress consented to have national

banks subject to suit and we believe Congress intended that in those courts alone could a national bank be sued against its will.

We would not lightly conclude that a congressional enactment has no purpose or function. We must strive to give appropriate meaning to each of the provisions of Title 12 and its predecessors. See United States v. Menasche, 348 US 528, 539, 99 Led 615, 624, 75 S Ct 513; Montclair Twp. v. Ramsdell, 107 US 147, 152, 27 L ed 431, 432, 2 S Ct 391. Appellee, however, would have us hold that any state court could entertain a suit against a national bank as long as state jurisdictional and venue requirements were otherwise satisfied. Such a ruling, of course, would render altogether meaningless a congressional enactment permitting suits to be brought in the bank's home county. This we are unwilling to do, particularly in light of the history of §57 . . ."

Appellant contends the mandatory provision of Subdivision 14 of Article 1995, V.A.C.S. controls venue. "The pleadings concerning land in Scurry County are as follows:

"On November 12, 1974, The Fort Worth National Bank, Trustee, sold to Billy Cogdell and D. M. Cogdell, Jr., the real property interests held by The Fort Worth National Bank, Trustee, in the Cogdell Center properties in Scurry County, Texas, for a total consideration in excess of $10,000.00

Plaintiff alleges that the sale of an interest of real property held by Trustee as distributions from an Estate directly to the individuals serving as Executors of that Estate is proscribed by Section 352 of the Texas Probate Code."

Appellant's prayer for relief in part is as follows:

"WHEREFORE, Plaintiff prays that citation be issued to each of the Defendants named herein requiring them to answer and appear herein; and upon jury trial hereon that Plaintiff have judgment cancelling, rescinding, declaring void ab initio all leases, sales of all properties, real and personal, of the Estate of D. M. Cogdell, Deceased, to the

Independent Co-Executors and/or Trustee of the Estate of D. M. Cogdell, Deceased; . . ."

In Shellberg v. Shellberg, 428 S.W.2d 117 (Tex.Civ.App. Fort Worth 1968, writ dism'd), the court said:

"In Miller v. Howell, 234 S.W.2d 925 (Tex.Civ.App. 1950, no writ hist.), this court held: 'Plaintiffs say that their suit is one to recover land, and to partition land, and to foreclose a lien on land, a part of which land lies in Wood County. Their pleadings may contain conclusions to such effect, if the conclusions are read without regard to the remaining allegations in the pleadings, but when the pleadings are examined in their entirety, and when it is endeavored to find out what principal right or rights are asserted and what relief is sought, it is seen that the suit falls within a well-defined category. It is, by all standards, an equitable proceedings for a partnership accounting. It is a transitory action, rather than a local one, it is primarily a proceedings in personam, rather than a proceeding in rem.'

In the instant case when the pleadings are examined in their entirety and when it is endeavored to find out what principal right or rights are asserted and what relief is sought, we must conclude the trial court was correct in finding the suit was brought primarily to construe the written Trust Agreement, determine the rights and duties of the various trustees and beneficiaries, and to require an accounting from defendant as to his actions as a trustee.

The evidence, too, supports his findings.

The suit is primarily a proceeding in personam and not a proceeding in rem. Defendant was not entitled, therefore, to have the suit transferred to Moore County under the provisions of Sub. 14.

Venue was retained in Tarrant County under the provisions of Art. 7425b-24, Sections A and B, V.A.C.S."

Article 7525b-24(a) and (b) of Texas Trust Act provides:

"A. The district court shall have original jurisdiction to

construe the provisions of any trust instrument; to determine the law applicable thereto; the powers, responsibilities, duties, and liability of trustee; the existence or non-existence of facts affecting the administration of the trust estate; to require accounting by trustee; and to surcharge trustee.

B. In cases where there be a single trustee, the venue of such actions shall be in the county of the residence of such trustee; or if a corporation, in the county of its principal place of business. Where there are two or more trustees, then the venue shall be in the county where the principal office of the trust is maintained."

Article 1995, Subdivision 30, provides:

"30. Special venue—Whenever in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given.

We hold the record conclusively establishes the primary, dominant and ultimate purpose of this declaratory judgment suit is not to recover lands or remove encumbrances therefrom. Assuming this was a suit for the recovery of land, the above quoted portions of appellant's petition show the Bank parted with title before the commencement of this suit and under the holding in James v. Drye, 320 S.W.2d 319 (Tex. 1959) Subdivision 14 would not apply.

In James v. Drye, supra, the court said:

"This writ of error was granted because the holding of the Court of Civil Appeals that the suit was a suit for 'the recovery of lands' or 'damages to land' under Section 14, of Article 1995, Revised Civil Statutes, Vernon's Ann.Civ.St. art 1995, § 14, is in conflict with the holding of the Courts of Civil Appeals in the following cases: Smith v. Rampy, Tex.Civ.App. Amarillo, 1946, 198 S.W.2d 592; Morris Plan Bank of Fort Worth v. Ogden, Tex.Civ.App. Ft. Worth, 1940, 144 S.W.2d 998, and other similar cases. We approve

the holding of the earlier cases that suits against former owners of land who have parted with all title prior to the filing of suit are not suits for 'the recovery of lands', or 'damages to land' within the meaning of Section 14, Article 1995, Revised Civil Statutes, 1925 . . ."

We hold the summary judgment proof establishes as a matter of law there is no genuine issue of fact and the Bank is entitled to be sued in the county of its domicile as a matter of law under Article 7425 b-24 (a) and (b) and Subdivision 30 of Article 1995, T.R.C.S. and 12 USCA § 94.

We have considered all of Appellant's points and find no merit in them. They are overruled.

The judgment is affirmed.

ESCO WALTER
Associate Justice

April 15, 1976

IN THE SUPREME COURT OF TEXAS

September 29, 1976

No. B-6084
BILL P. COGDELL
vs.
THE FORT WORTH NATIONAL BANK
From Scurry County, Eleventh District.

Application of petitioner for writ of error to the Court of Civil Appeals for the Supreme Judicial District having been duly considered, it is ordered that the application be, and hereby is, dismissed for want of jurisdiction.

It is further ordered that applicant, Bill P. Cogdell, and surety, Merchants Mutual Bonding Company, pay all costs incurred on this application.

*****

October 27, 1976

No. B-6084
BILL P. COGDELL
vs.
THE FORT WORTH NATIONAL BANK
From Scurry County, Eleventh District.

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

* * * * *

I, GARSON R. JACKSON, Cleark of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of the Supreme Court of Texas in the

case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand the the seal of the Supreme Court of Texas, at the City of Austin, this, the Fifth day of November, 1976.

/s/ Garson R. Jackson
GARSON R. JACKSON, Clerk

By _____, Deputy.

NO. 11429

BILL P. COGDELL
V.
DAVID MARTIN COGDELL, JR., ET AL
IN THE DISTRICT COURT OF SCURRY COUNTY, TEXAS
132nd JUDICIAL DISTRICT
ORDER SUSTAINING PLEA OF PRIVILEGE

On the 9th day of October, 1975, came on to be heard the Motion for Summary Judgment of Defendant The Fort Worth National Bank, Trustee under the Will of D. M. Cogdell, Deceased, on its Plea of Privilege to the Petition of Plaintiff Bill P. Cogdell, and came the Plaintiff and said Defendant by their attorneys of record and announced ready; and the Court having read the pleadings and Affidavit on file and having heard the argument of counsel and considered all matters properly before the Court is of the opinion and finds that said Plea of Privilege should be sustained.

It is therefore ORDERED, ADJUDGED and DECREED that the Plea of Privilege of Defendant The Fort Worth National Bank, Trustee under the Will of D. M. Cogdell, Deceased, be sustained and that the cause of action alleged against said Defendant by Plaintiff in the suit styled and numbered hereinabove be transferred to the District Court of Tarrant County, Texas, the county of said Defendant's residence, office and place of business. It is further ORDERED, ADJUDGED and DECREED that the Clerk of this Court transmit to the Clerk of the District Court of Tarrant County, Texas, certified copies of the following instruments:

Petition for Declaratory Judgment.

Citation and Officer's Return of Citation served on Defendant The Fort Worth National Bank.

Plea of Privilege of The Fort Worth National Bank, Trustee under the Will of D. M. Cogdell, Deceased.

Controverting Plea to Plea of Privilege of The Fort Worth National Bank, Trustee.

Defendant's Motion for Summary Judgment on Plea of Privilege.

Affidavit of Bruce Petty in support of Motion for Summary Judgment on Plea of Privilege of The Fort Worth National Bank and Exhibit thereto.

Fiat setting hearing on Defendant's said Motion for Summary Judgment.

This Order granting Defendant's Motion for Summary Judgment on its Plea of Privilege.

It is further ORDERED, ADJUDGED and DECREED that all costs incurred in this Court in connection with his suit against said Defendant be taxed against Plaintiff Bill P. Cogdell.

To which order Plaintiff Bill P. Cogdell then and there objected and excepted in open court and gave notice of appeal to the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, Texas.

RENDERED AND SIGNED the 20th day of October, 1975.

Judge Presiding
/s/_____
Wayland G. Holt

NO. B-6084

IN THE SUPREME COURT OF TEXAS

BILL P. COGDELL,

Petitioner,

v.

THE FORT WORTH NATIONAL BANK, TRUSTEE,

Respondent

AMENDED NOTICE OF APPLICATION FOR WRIT OF CERTIORARI

NOTICE is hereby given that BILL P. COGDELL, Petitioner above named, hereby gives Notice of his Application for Writ of Certiorari to the Supreme Court of the United States from this Court's overruling of the Motion for Rehearing entered in this action on the 27th day of October, 1976, of the Dismissal of the Application for Writ of Error entered September 29, 1976, in Cause No. 4868 in the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland entered April 15, 1976, affirming the Order sustaining Plea of Privilege rendered October 20, 1975, in Cause No. 11,429 in the District Court of Scurry County, Texas, 132nd Judicial District.

This Application for Writ of Certiorari is taken pursuant to 28 *USC §1257 (3).*

DATED November 15, 1976

Respectfully submitted,

GLORIA T. SVANAS

1813 East Eighth Street
Odessa, Texas 79761
Telephone: (915) 337-1568

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT a true and correct copy of the foregoing Amended Application for Writ of Certiorari has this 14th day of November, 1976, been placed in the United States Mail, postage prepaid addressed to the following:

Mr. Robert M. Randolph and
Mr. Marvin Champlin
Law, Snakard, Brown and Gambill
2600 Fort Worth National Bank Building
Fort Worth, Texas, 76102
Certified Mail No. 696597
Return Receipt Requested
Attorneys for The Fort Worth National Bank, Trustee

Mrs. Oleta Moseley, Clerk
Court of Civil Appeals
Eleventh Supreme Judicial District
Eastland, Texas, 76448
Certified Mail No. 277857
Return Receipt Requested; and

Mrs. Bonnie Brooks
District Court Clerk
Scurry County Courthouse
Snyder, Texas, 79549
Certified Mail No. 277858
Return Receipt Requested

GLORIA T. SVANAS

IN THE COURT OF CIVIL APPEALS
FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT
OF TEXAS
EASTLAND, TEXAS

NO. 4868

BILL P. COGDELL,

Appellant,

v.

THE FORT WORTH NATIONAL BANK, TRUSTEE,

Appellee

Request To Clerk To Certify And Transmit Entire Record

TO: (Mrs.) OLETA MOSELEY
Clerk of the Court of Civil Appeals
for the Eleventh Supreme Judicial District
of Texas, Eastland, Texas

Pursuant to the provisions of Rule 12(1) of the Rules of the Supreme Court of the United States, you are requested to certify and transmit to the Supreme Court of the United States the entire record of the proceedings herein.

GLORIA T. SVANAS
1813 East Eighth Street
Odessa, Texas 79761
Attorney For The Petitioner,
Bill P. Cogdell, Appellant

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT a true and correct copy of the foregoing Request to Clerk to Certify and Transmit entire Record has this 22nd day of November, 1976, been placed in the United States Mail, postage prepaid, addressed to the following:

Mr. Robert M. Randolph and
Mr. Marvin Champlin
Law, Snakard, Brown and Gambill
2600 Fort Worth National Bank Building
Fort Worth, Texas, 76102

GLORIA T. SAVAS